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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Communications Assistance)
For Law Enforcement Act)

CC Docket No. 97-213

ORIGINAL

**REQUEST OF SKYTEL COMMUNICATIONS, INC. FOR EXTENSION
OF TIME TO COMPLY WITH THE ASSISTANCE CAPABILITY
REQUIREMENTS OF SECTION 103 OF CALEA**

SkyTel Communications, Inc. ("SkyTel") (formerly Mobile Telecommunication Technologies Corp.), pursuant to Section 107(c) of the Communications Assistance For Law Enforcement Act ("CALEA"),^{1/} hereby respectfully requests that the Commission grant SkyTel an extension of time for complying with the assistance capability requirements of Section 103 of CALEA.^{2/} The basis for this request is straightforward: the standards to which carriers such as SkyTel are to comply have either not been developed, or have not been approved by law enforcement and no compliant equipment has thus been manufactured. Accordingly, it is literally impossible to comply with the letter of the law.

I. INTRODUCTION

Pursuant to the "assistance capability requirements" of Section 103(a) of CALEA, by October 25, 1998, telecommunications carriers - including providers of messaging services - are generally required to ensure that their equipment, facilities, and services are capable of providing law enforcement officials with certain call content information, and "call identifying information

^{1/} 47 U.S.C. § 1006(c).

^{2/} 47 U.S.C. § 1002.

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that is reasonably available to the carrier for an intercepted communication."^{3/} Manufacturers and carriers are further required to cooperate in order to ensure that carriers are provided with CALEA-compliant equipment "on a reasonably timely basis and at a reasonable charge."^{4/} Thus, in enacting CALEA, Congress envisioned a cooperative process whereby industry standards-setting bodies would promulgate technical standards for CALEA-compliant equipment, and manufacturers would utilize these standards to provide telecommunications carriers - including messaging providers - with timely access to such equipment.

Law enforcement was to provide the industry, not less than one year after CALEA's enactment, with notice of its simultaneous capacity requirements.^{5/} Industry would then have three years to factor these requirements into its capability standard and design and install the additional equipment necessary to implement the capacity requirement. This would provide a gradual and low cost transition to CALEA-compliant equipment. Thus, as messaging providers naturally upgraded and replaced their network infrastructure over a four year period, they would be replacing old, non-compliant equipment with new, compliant equipment without

^{3/} 47 U.S.C. § 1002(a). The Attorney General is required to consult with the telecommunications industry's standard-setting organizations in order to assist these organizations in promulgating technical standards for CALEA-compliant telecommunications equipment. 47 U.S.C. § 1006(a)(1).

^{4/} 47 U.S.C. § 1005(a).

^{5/} 47 U.S.C. §1003(a).

significant financial burden. Carriers would thereby not have to make a large and sudden investment in new equipment at the compliance deadline. Unfortunately, due to delays in the standards setting process and other factors beyond the control of messaging providers, Congress's vision has not become reality.^{6/}

II. SKYTEL'S NEEDS AND OBLIGATIONS

SkyTel is the preeminent provider of nationwide messaging. It serves over 1,000,000 subscribers in all 50 states, and offers a variety of messaging services including one-way paging, two-way paging, e-mail access, voice mail, and international services. SkyTel is unique in that it has developed and built its own one-way network and its own national two-way network. SkyTel is the only carrier in the nation to develop and build a commercially viable two-way messaging system based on Motorola, Inc.'s ("Motorola") Reflex 50 protocol. This network consists of SkyTel designed interfaces with telephone systems, e-mail systems, and the internet. The majority of SkyTel's transmitter and receiver hardware is manufactured by Motorola and Glenayre Technologies, Inc. ("Glenayre").^{2/}

^{6/} Because of understandable resource constraints, the Federal Bureau of investigation ("FBI") has focused its energies on other industries (in particular, the local exchange, cellular and personal communications service ("PCS") industries) and has not been able to specify its requirements for the messaging industry.

^{2/} Conversations with representatives of Mtel's third party equipment suppliers including Glenayre and Motorola confirm that they do not currently offer CALEA-compliant messaging equipment for sale. Further, these representatives cannot specify when Glenayre and Motorola will make such equipment

It is impossible for SkyTel to begin to take any steps to comply with CALEA for messaging services until law enforcement's requirements are identified and appropriate standards have been established and accepted by law enforcement.^{8/} Only after standards have been adopted can SkyTel or any of its third party equipment suppliers realistically begin to develop CALEA compliant equipment, systems, and networks.

Despite the absence of capacity and capability requirements, SkyTel has made, and continues to make, every effort to provide law enforcement officials with the ability to engage in court ordered electronic surveillance for traditional one-way paging. Specifically, SkyTel routinely cooperates with law enforcement officials by providing them, pursuant to a valid court order, with the CAP codes of specific pagers and with clone pagers with these CAP codes installed in them.

III. GIVEN THE LACK OF STANDARDS AND CALEA COMPLIANT MESSAGING EQUIPMENT, AN EXTENSION OF THE COMPLIANCE DEADLINE IS CLEARLY WARRANTED

As demonstrated above, it is not possible for SkyTel to conform its network to any "established" CALEA compliance standard. Under such circumstance, a telecommunications carrier "may petition the Commission for 1 or more extensions of the deadline for complying with the assistance capability requirements under section

commercially available.

^{8/} The messaging industry has promulgated standards for one way paging, but law enforcement has yet to accept them. No standards for more advanced messaging have been developed or approved.

103."^{9/} The Commission may then, "after consultation with the Attorney General," grant such an extension request if "compliance with the assistance capability requirements *"is not reasonably achievable through application of technology available within the compliance period."*^{10/}

SkyTel clearly meets the statutory requirement for an extension of the compliance deadline for several reasons. Industry standards-setting organizations have yet to promulgate the technical standards for manufacturing CALEA-compliant two-way messaging equipment.^{11/} Therefore, manufacturers have not begun to produce such equipment. Given the 18 to 24 months it takes to do so, such equipment will not be available by October 25, 1998. Equally important, Glenayre and Motorola have informed SkyTel that they do not currently produce CALEA-compliant messaging equipment, and cannot specify when such equipment will be commercially available.

The public safety and national security will not be

^{9/} 47 U.S.C. § 1006(c)(1). When determining whether compliance with the assistance capability requirements is "reasonably achievable," the Commission is directed to consider the effect of compliance on, *inter alia*: (1) public safety and national security; (2) competition and the provision of new technologies and services to the public; and (3) the nature and cost of the equipment, facility or service at issue and the financial resources of the telecommunications carrier.

^{10/} 47 U.S.C. § 1006(c)(2).

^{11/} In December 1997, TIA promulgated JStd 025 as an interim standard for CALEA-compliant landline and broadband CMRS equipment. The standard is currently under review from ANSI.

compromised if the Commission grants this request. SkyTel willingly supplies law enforcement officials with cloned pagers pursuant to a valid warrant. Thus, granting an extension will not compromise the ability of law enforcement officials to carry out court ordered electronic surveillance of messaging subscribers.^{12/}

III. CONCLUSION

For the reasons stated above, SkyTel respectfully requests that the Commission grant SkyTel an extension for the deadline for complying with the assistance capability requirements of CALEA for at least two years so that law enforcement's capacity and capability requirements for advanced paging services can be identified and an appropriate industry standard can be promulgated.

Respectfully submitted,

SKYTEL COMMUNICATIONS, INC.

By: 

Thomas Gutierrez
J. Justin McClure

Its Attorneys

Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 857-3500

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^{12/} In contrast, were the Commission not to grant SkyTel's request, it would effectively discourage competition and the provision of new services in the messaging industry--contrary to the Commission's statutory mandate.